

37 Am. Jur. 2d Fraud and Deceit § 73

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

a. In General

§ 73. Mingling of fact and opinion

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  11

It is not necessary, to constitute fraud, that all the representations made in a transaction be statements of fact.¹ It is immaterial that some of the false representations do not separately or collectively constitute an actionable statement of fact; that some are matters of opinion will not preclude relief.² It is sufficient if there are any misrepresentations of material facts made with knowledge of their falsity and the intention that they should be relied upon, which constitute a substantial factor in inducing the transaction.³ Stated otherwise, the general rule that the expression of an opinion cannot constitute fraud does not apply if in addition to expressing an opinion, material facts have been fraudulently concealed.⁴

A representation of knowledge of the particular facts upon which an expression of opinion is based, which facts are unknown to the representee, constitutes a misrepresentation of fact if false.⁵ A statement that by itself might be a mere expression of opinion may be so connected with a statement of a material fact as to amount to fraud.⁶ As the rule has otherwise been stated, there is an exception to the general rule that opinions are not actionable in fraud where the statement of opinion is so intertwined with other misstatements of fact that the representation as a whole amounts to a false representation of fact.⁷ If the opinion misrepresents the facts upon which it is based or implies the existence of facts that are nonexistent, it constitutes an actual misrepresentation,⁸ and the same may be true of a false opinion that is not honestly entertained and is material to the transaction when considered with other inducements, or where it is accompanied by active misrepresentation or related to a subject as to which the parties have no knowledge or means of ascertaining the proof.⁹

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Footnotes

¹ [Lake v. Thompson](#), 366 Pa. 352, 77 A.2d 364 (1951).

- ² Lake v. Thompson, 366 Pa. 352, 77 A.2d 364 (1951).
- ³ Lake v. Thompson, 366 Pa. 352, 77 A.2d 364 (1951).
- ⁴ Reis v. Peabody Coal Co., 997 S.W.2d 49 (Mo. Ct. App. E.D. 1999) (applying Kentucky law).
- ⁵ Wilke v. Coinway, Inc., 257 Cal. App. 2d 126, 64 Cal. Rptr. 845 (1st Dist. 1967); Pacific Mut. Life Ins. Co. v. Ernst & Young & Co., 10 S.W.3d 798 (Tex. App. Dallas 2000), judgment rev'd on other grounds, 51 S.W.3d 573 (Tex. 2001); Holcomb & Hoke Mfg. Co. v. Auto Interurban Co., 140 Wash. 581, 250 P. 34, 51 A.L.R. 39 (1926).
- ⁶ Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Trenholm v. Ratcliff, 646 S.W.2d 927 (Tex. 1983) (direct representations of present facts were so intertwined with the future prediction that the whole statement amounted to a representation of facts).
- ⁷ Allen v. Devon Energy Holdings, L.L.C., 367 S.W.3d 355 (Tex. App. Houston 1st Dist. 2012), petition for review filed, (May 23, 2012).
- ⁸ People v. Webb, 74 Cal. App. 4th 688, 88 Cal. Rptr. 2d 259 (2d Dist. 1999).
- ⁹ Wilke v. Coinway, Inc., 257 Cal. App. 2d 126, 64 Cal. Rptr. 845 (1st Dist. 1967).

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